



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

Tam M. Doduc, Board Chair  
1001 I Street • Sacramento, California 95814 • (916) 341-5615  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

April 17, 2007

## VIA U.S. MAIL AND EMAIL

Mr. Davin Diaz  
Director, San Bernardino Office  
Center for Community Action and  
Environmental Justice  
255 North "D" Street, Suite 402  
San Bernardino, CA 92401  
[davin.d@ccaej.org](mailto:davin.d@ccaej.org)

Peter R. Duchesneau, Esq.  
Manatt, Phelps & Phillips LLC  
11355 West Olympic Boulevard  
Los Angeles, CA 90064-1614  
[pduchesneau@manatt.com](mailto:pduchesneau@manatt.com)

Philip C. Hunsucker, Esq.  
Resolution Law Group, P.C.  
3717 Mt. Diablo Blvd., Suite 200  
Lafayette, CA 94549  
[phunsucker@reslawgrp.com](mailto:phunsucker@reslawgrp.com)

Jorge A. León, Esq.  
Office of Enforcement  
State Water Resources Control Board  
1001 I Street, 16<sup>th</sup> Floor  
P.O. Box 100  
Sacramento, CA 95812-0100  
[jleon@waterboards.ca.gov](mailto:jleon@waterboards.ca.gov)

Scott A. Sommer, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
50 Fremont Street  
San Francisco, CA 94105-2228  
[scott.sommer@pillsburylaw.com](mailto:scott.sommer@pillsburylaw.com)

Robert D. Wyatt, Esq.  
Allen Matkins Leck Gamble Mallory  
& Natsis LLC  
3 Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111-4074  
[rw Wyatt@allenmatkins.com](mailto:rw Wyatt@allenmatkins.com)

Dear Messrs. Diaz, Duchesneau, Hunsucker, León, Sommer, and Wyatt:

## FURTHER RULINGS ON OBJECTIONS AND REVISIONS TO REBUTTAL SUBMISSION REQUIREMENTS AND HEARING DATES SWRCB/OCC FILE A-1824

The State Water Resources Control Board (State Water Board) has received the case-in-chief submissions of the Santa Ana Water Board's Advocacy Team, the City of Rialto, and the Center for Community Action and Environmental Justice (CCA EJ), and expects to receive the submissions of Goodrich Corporation, the Emhart Parties, and Pyro Spectaculars, Inc. (the Responding Parties) later today. In addition, I have received numerous objections, renewed objections, and supplemental evidence in support of objections submitted by the Responding Parties. Given the significant volume of material submitted by all the parties, I find that it is appropriate to revise the requirements for the submittal of rebuttals and to adjust the hearing dates accordingly. To this extent, I partially sustain the Responding Parties' objections.

All deadlines after today in the Second Revised Hearing Notice (dated April 3, 2007) are vacated. **Rebuttal submissions will now be due on June 7, 2007 at 5:00 p.m.** In addition, the page limitation on rebuttal argument is lifted. **PowerPoint and other computer displays**

*California Environmental Protection Agency*

will now be due on Friday, June 22 at noon. The hearing will commence on Monday, July 9 at 9:00 a.m. and will continue on July 10, 11, 12, 18, and 19.

The Responding Parties have raised various objections to the schedule and my prior rulings. Many of the objections have focused on a perceived due process violation arising from the limited time between the submittal of the Santa Ana Water Board's Advocacy Team's case-in-chief and the Responding Parties' submittal of their cases-in-chief. The objections are also based, in part, on the City of Rialto's advocacy for a result similar to that advocated by the Santa Ana Water Board's Advocacy Team. As I noted in my April 10, 2007 ruling, the simultaneous exchange of submissions would provide adequate process in this administrative proceeding. In comparable administrative proceedings, cases-in-chief are submitted simultaneously because they do not serve a rebuttal purposes. The hearing schedule in this proceeding, moreover, explicitly contemplates the submission of rebuttal testimony and evidence in advance of the hearing. Finally, the hearing itself affords an opportunity to cross-examine and to rebut evidence consistent with due process and the Administrative Procedure Act.

I have already on two occasions provided the Responding Parties additional time to submit their cases-in-chief. The First Revised Hearing Notice (Mar. 8, 2007) gave the Responding Parties (along with the City of Rialto and CCAEJ) an additional two weeks, relative to the Advocacy Team, to submit their cases-in-chief. The Second Revised Hearing Notice (Apr. 3, 2007) gave the Responding Parties an additional five days. This second adjustment was tailored as a partial remedy to the Advocacy Team's failure to comply fully with the hearing notices.

The delay not only afforded the Responding Parties additional time to prepare their case-in-chief submittals—submittals distinct from their rebuttals—but it also penalized the Advocacy team by significantly reducing its time to prepare a rebuttal to the Responding Parties' submissions. The penalty was uniquely severe for the Advocacy Team, because unlike the Responding Parties, the Advocacy Team's rebuttal will be its only opportunity to respond to the Responding Parties' cases-in-chief. In contrast, the Responding Parties will essentially have had the opportunity to file two responsive submittals to the Advocacy Team's submission. There is no due process violation in the manner in which this proceeding has been structured or the manner in which my rulings have addressed the Advocacy Team's noncompliance with the Hearing Notices.

Nonetheless, I am concerned about the volume of material submitted by the City of Rialto (and presumably later today by the Responding Parties) and how to ensure a fair and orderly proceeding. While there is nothing constitutionally infirm in designating parties to the proceeding who have interests aligned with the Advocacy Team, the City of Rialto's submission will require time for the Responding Parties to review. The intertwined nature of the Advocacy Team's case and the City of Rialto's submittal has only become clear during the review of the submittal and the Responding Parties' objections. That is not to say that the aligned interests are inappropriate, but it does make it appropriate to factor in that relationship in establishing further submission deadlines and the order of proceeding at the hearing.

It is not necessary to adjust the time for submission of the Responding Parties' cases-in-chief, because as contemplated by the Hearing Notices, the responsive argument, testimony, and evidence was to come in rebuttal submissions. Responding Parties (and in fact all parties to the

proceeding) should be afforded additional time to review the submittals and to prepare appropriate rebuttal testimony. As a result, rebuttal submittals will now be due on June 7, 2007 at 5:00 p.m. Moreover, in light of the length of the points and authorities submitted to date, I am lifting the page restrictions on rebuttal argument.

A third revised hearing notice incorporating the foregoing rulings will be issued in the next week.

Sincerely,



Tam M. Doduc  
Board Chair

cc: James L. Meeder, Esq. **[via U.S. mail & email]**  
Allen Matkins Leck Gamble Mallory  
& Natsis LLC  
3 Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111-4074  
[jmeeder@allenmatkins.com](mailto:jmeeder@allenmatkins.com)

Mr. Gerard Thibeault **[via U.S. & email only]**  
Executive Officer  
Santa Ana Regional Water Quality  
Control Board  
3737 Main street, Suite 500  
Riverside, CA 92501-3339

Steven J. Elie, Esq. **[via U.S. mail & email]**  
Barry C. Groveman, Esq.  
**[via U.S. mail and email]**  
Musick, Peeler & Garrett LLP  
One Wilshire Boulevard  
Los Angeles, CA 90017  
[s.elie@mpglaw.com](mailto:s.elie@mpglaw.com)  
[bgroveman@earthlink.net](mailto:bgroveman@earthlink.net)

Mr. Kurt V. Berchtold **[via email only]**  
Assistant Executive Officer  
Santa Ana Regional Water Quality  
Control Board  
3737 Main street, Suite 500  
Riverside, CA 92501-3339

Mr. Bruce Amig **[via U.S. mail & email]**  
Goodrich Corporation  
Four Coliseum Center  
2730 W. Tyvola Road  
Charlotte, NC 28217-4578  
[bruce.amig@goodrich.com](mailto:bruce.amig@goodrich.com)

Ms. Ann Sturdivant **[via email only]**  
Senior Engineering Geologist  
Santa Ana Regional Water Quality  
Control Board  
3737 Main street, Suite 500  
Riverside, CA 92501-3339

cc: Erik S. Mroz, Esq. [via U.S. mail & email]  
Resolution Law Group  
21800 Oxnard Street, Suite 780  
Woodland Hills, CA 91367  
[emroz@resolutionlawgroup.com](mailto:emroz@resolutionlawgroup.com)

Martin N. Refkin, Esq. [via U.S. mail & email]  
Gallagher & Gallagher, PC  
1925 Century Park East, Suite 950  
Los Angeles, California 90067  
[refkin@thegallaghergroup.com](mailto:refkin@thegallaghergroup.com)

Joseph Mann, Esq. [via U.S. mail and email]  
National Environmental Law Center  
369 Broadway Street, Suite 200  
San Francisco, CA 94133  
[jmann@nelconline.org](mailto:jmann@nelconline.org)

Mr. Robert Holub [via email only]  
Supervising Water Resource Control Engineer  
Santa Ana Regional Water Quality  
Control Board  
3737 Main street, Suite 500  
Riverside, CA 92501-3339

Erik Spiess, Esq. [via email only]  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
P.O. Box 100  
Sacramento, CA 95812-0100

Lyriss List

Perchlorate Email Distribution List